REMARKS

Claim Status

Claims 1-26 are pending in the application, with Claims 21-25 being withdrawn from consideration. Claims 1-26 have been subject to a restriction requirement under 35 U.S.C. § 121. The declaration has been objected to. The specification has been objected to. Claim 26 has been objected to. Claims 1-6 have been rejected under 35 U.S.C. § 112, Claims 1-5 and 7 have been rejected under 35 U.S.C. § 102, Claims 6, 8-9, 10-13, and 14-20 have been rejected under 35 U.S.C. § 103.

Response to Requirement for Restriction of Inventions

The Examiner has required the Applicants, under 35 U.S.C. § 121, to elect a single disclosed invention for prosecution on the merits. Applicants' Attorney made a provisional election with traverse by telephone on December 6, 2001 to prosecute the invention of Group I. This hereby confirms the election to prosecute the invention designated in the Office Action as Invention I. This election is made without traverse. Claims 1-20 and 26 are drawn to this invention.

Claim 21-25 have been canceled by this amendment as being drawn to a non-elected invention.

Objection to the Declaration

The Declaration is indicated as defective for not identifying the citizenship of each inventor. Applicants note that the citizenship of inventor Lisa A. Mackay was inadvertently omitted from the declaration filed November 7, 2000. Applicants' Attorney apologizes for this oversight. Applicants have submitted with this Amendment a supplemental declaration in compliance with 37 CFR § 1.67(a). Because the defect indicated pertains to only one of the inventors named, it is proper under 37 CFR § 1.67(a)(2) for such supplemental declaration to name the entire inventive entity, but be signed only by the inventor to whom the deficiency relates. As the supplied supplemental Declaration remedies the deficiency indicated in accordance with 37 CFR § 1.67(a)(2), the Examiner is requested to withdraw the objection to the Declaration.

Objections to the Specification

The Examiner has objected to the title of the invention as supposedly not being descriptive of the claimed invention. Applicants believe that the title is sufficiently descriptive and respectfully request withdrawal of this objection. In any event, this objection is a matter of form not necessary for further examination of the claims. Therefore, Applicants request that this formal matter be held in abeyance under 37 CFR § 1.111(b) until allowable subject matter is indicated.

The specification has also been objected to for supposedly not providing proper antecedent basis for the claimed subject matter. In particular, the Office Action recites that a tampon usage system has note been defined nor supported by the specification. Applicants respectfully traverse this objection and request its withdrawal. Claim 20 is the only claim in which a "tampon usage system" is

referred to as part of this claim to a feminine hygiene kit. Page 13, line 30 – Page 14, line 9 of the specification provides one example of antecedent basis for such a system. For example, on Page 14, at lines 3-9, the specification discloses that the claimed booklet can offer guidance to the user in formulating a system of tampon usage that is right and best for her. Additional details on the contents of such a booklet and how it may be used are also described. Additionally Page 4, lines 7-9 of the specification also provide antecedent basis for the claimed feminine hygiene kit having an instruction booklet which assists a consumer in creating a tampon usage system. Therefore, the objection to the specification should be withdrawn.

Objections to the Claims

Claim 26 has been objected to as being of improper dependent form. Claim 26 has been canceled by this amendment. Therefore, this objection is now moot and may be withdrawn.

Rejections under 35 U.S.C. § 112

Claims 1-6 have been rejected under 35 U.S.C. § 112, first paragraph, for supposedly not meeting the enablement requirement. The Office Action cites that a syngina absorbent capacity (as recited in Claims 1-6) has not been defined by the specification.

The Applicants respectfully transverse these rejections and ask that they be withdrawn. "Syngyna absorbent capacity" refers to the absorbency of a tampon as measured by the "syngyna test" or the "syngyna absorbency test." See Page 9, lines 22-33 for instruction to measure the syngyna absorbent capacity using the FDA Syngyna Test. This section of the specification also provides guidance on making a tampon having the claimed syngyna capacity. The Office Action points to no evidence that how to conduct the test or how to make a tampon having the claimed test results would not be known to one of skill in the art in light of this description.

The syngyna test is a well known industry standard and would be known to one of skill in the tampon manufacture art. All tampon manufacturers in the United States are required to perform this testing on their tampons and to label their packaging based on results of such absorbency tests.

The Examiner is requested to take notice of 21 CFR § 801.430(f) which is the regulation of the Food & Drug Administration requiring all U.S. tampon makers to conduct syngyna absorbency testing and to comply with the corresponding labeling requirements. This same section of the FDA regulation also sets out the detailed procedure for this test. As all tampons sold in the United States must comply with these regulations (and consequently, run this test in the same manner), it is inconceivable that one of ordinary skill in the art would not be aware of the meaning of the term "syngyna absorbent capacity" or "syngyna test." Knowledge of applicable legal requirements is typically presumed. Given the publication of this test by the United States, and the existence of a legal obligation to be aware of the test, one of skill in the art would have more than adequate notice of this term and how to determine its meaning.

The Examiner's attention is also directed to the official Web Site of the United States Food and Drug Administration which documents that in June of 1982, the standard syngyna test was developed by industry and the government. In October of 1989, the FDA began requiring the use of the syngyna absorbency testing and labeling for all tampons sold in the United States. The FDA official web site at http://www.fda.gov./opacom/backgrounders/womenhe.html documents this history and the specific fact that this test is known as the "syngyna test" by the industry. The Examiner is also requested to take notice of this publication by the United States.

In light of fact that the referenced measurement is the subject of a uniform and well-known test required by the United States, the Applicants request that the rejection of Claims 1-6 under 35 U.S.C. § 112, first paragraph, be withdrawn.

The Office Action also notes that a tampon usage system as set forth in the claims has supposedly not been supported by the specification. Even assuming that such a statement were the case, the Office Action points to no evidence whatsoever how Claims 1-6 do not meet the enablement requirement as a result. Indeed, these claims make no mention of a tampon usage system. Such a term appears only in Claim 20. The Examiner's attention is directed to the Objections to the Specification section above for a discussion of this claim. Because the Office Action makes no showing of how a rejection for failure to comply with 35 U.S.C. § 112, first paragraph is proper, these rejections should be withdrawn.

Rejections Under 35 U.S.C. § 102

Claims 1-5 have been rejected under 35 U.S.C. § 102(e) as supposedly anticipated by Moder et al. (US 5,986,165). Amended Claim 1 is not anticipated by the Moder et al. reference because Moder does not disclose each and every feature of Amended Claim 1. For example, there is no disclosure in the Moder reference of a tampon in the claimed kit having a core with an absorbent capacity of less than 6 grams. The only evidence pointed to in the Moder reference in the Office Action for a disclosure of absorbent capacity of the tampon is in Column 19, line 66 to Column 20, line 19. This disclosure in the Moder reference, however, only refers to tampon of the "regular," "super" and "super-plus" absorbencies as designated by the FDA. As noted in the present specification, none of these absorbency ranges correspond to less than 6 grams (which is termed "junior") absorbency. The particular advantages of such a combination of a tampon having an absorbent capacity of less than 6 grams in a kit with the claimed backup feminine protection product are described in detail on Page 9, line 33 – Page 11, line 28. Because the Moder reference nowhere describes the kit of Amended Claim 1 having the claimed tampon with an absorbent capacity of less than 6 grams and the claimed backup feminine protection product, it cannot anticipate Claim 1. Similarly, Claims 2-5 which depend from Claim 1 are not anticipated by the Moder reference for the same reasons. Therefore, the Examiner is respectfully requested to withdraw the rejections under 35 U.S.C. § 102 and to allow the claims.

Claim 7 has been rejected under 35 U.S.C. § 102(e) as anticipated by Stravitz (US 6,164,442). As Claim 7 has been canceled by this Amendment, this rejection is now moot and may be withdrawn.

Rejections Under 35 U.S.C. § 103

Claims 6, 8-9 and 14-20 are rejected under 35 U.S.C. § 103 as unpatentable over Stravitz. These rejections are improper and should be withdrawn. All of the rejected claims depend, directly or indirectly from Amended Claim 1. The Stravitz reference nowhere discloses a feminine hygiene kit comprising a tampon with an absorbency of less than about 6 grams. The Office Action simply concludes that it would be obvious to substitute one type of tampon for the other. This statement does not make out a proper *prima facie* case of obviousness. The Examiner is required to point to some suggestion in the reference itself showing the desirability of making the required modification to the reference. In this case, all Stravitz discloses is a carrying case which may contain tampons and/or other types of feminine care products and be provided with a built in mirror. There is no suggestion of the desirability of including a tampon having the recited absorbency. The Examiner may not simply dismiss this claimed feature as "requiring only a level of ordinary skill in the art" without any analysis. Indeed, as noted above, the instant specification contains extensive discussion of the importance of this claimed feature. It is improper to ignore this evidence in conclusory fashion as is done in the Office Action.

Claims 10-13 are rejected under 35 U.S.C. § 103 as unpatentable over Stravitz in further view of Morrow (US 5,998,386). These claims also all depend in their current form from Amended Claim 1. The cited combination of references does not overcome the deficiencies noted above with respect to the lack of suggestion of the claimed tampon absorbency. Therefore these rejections are improper for the same reasons given above with respect to Claims 6, 8-9 and 14-20. The Examiner is respectfully requested to withdraw the rejections under 35 U.S.C. § 103 and allow the claims.

SUMMARY

Attached hereto is a marked-up version of the changes made to the specification and claims by the current amendment. The attached page is captioned **"Version with markings to show changes made."**

All of the relevant rejections in the Office Action have been discussed.

In light of the discussions contained herein, Applicants respectfully request reconsideration of the rejections and their withdrawal, and that all of the claims be allowed.

Issuance of a Notice of Allowance at an early date is respectfully requested.

Respectfully submitted,

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VERSION WITH MARKINGS TO SHOW CHANGES MADE

In the Claims

The claims indicated as "Amended" above have been amended as follows:

1. (Amended) A feminine hygiene kit comprising:

an absorbent tampon, said tampon comprising an absorbent core and a withdrawal mechanism attached thereto, wherein said absorbent core has a [syngina] <u>syngyna</u> absorbent capacity of less than [or equal to about] 6 grams, and

a backup feminine protection product, wherein

said absorbent tampon and said backup feminine protection product are packaged in a common package.

8. (Amended) The feminine hygiene kit of Claim 1 [or Claim 7] wherein said kit further comprises a tampon insertion guide.

9. (Amended) The feminine hygiene kit of Claim 1 [or Claim 7] wherein said kit further comprises a vaginal lubricant.

10. (Amended) The feminine hygiene kit of Claim 1 [or Claim 7] wherein said kit further comprises an insertion glove.

12. (Amended) The feminine hygiene kit of Claim 1 [or Claim 7] wherein said kit further comprises a finger cover.

14. (Amended) The feminine hygiene kit of Claim 1 [or Claim 7] wherein said kit further comprises a bonus product offering.

19. (Amended) The kit of Claim 1 [or 7] wherein said kit further comprises an instruction booklet.